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10 Attorneys for Defendants  
C&S WHOLESALE GROCERS, INC. and  
11 TRACY LOGISTICS LLC

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14  
15 JOSE CHAN; an individual,  
16 Plaintiff,

17 v.

18 C&S WHOLESALE GROCERS, INC.,  
a Vermont corporation; TRACY  
19 LOGISTICS, LLC, an unknown  
business entity; and DOES 1 through  
20 100, inclusive,

21 Defendants.  
22

CV 13-6357 GAF (Jx)  
Case No.

NOTICE OF REMOVAL OF  
CIVIL ACTION TO UNITED  
STATES DISTRICT COURT

[LASC Case No. BC515593]

Complaint Filed: July 18, 2013

23 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO  
24 PLAINTIFF AND HIS COUNSEL OF RECORD:

25 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1446,  
26 defendants C&S Wholesale Grocers, Inc. and Tracy Logistics LLC ("Defendants")  
27 hereby remove the above-captioned action from Los Angeles County Superior  
28 Court of the State of California to the United States District Court for the Central

FILED  
13 AUG 29 PM 3:55  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

1 District of California. This Court has jurisdiction over the action pursuant to 28  
2 U.S.C. § 1332(a) (diversity of citizenship jurisdiction).

3 1. On July 18, 2013, Plaintiff Jose Chan (“Plaintiff”) filed a Complaint  
4 in the Los Angeles County Superior Court of the State of California entitled *JOSE*  
5 *CHAN, an individual v. C&S Wholesale Grocers, Inc. a Vermont corporation;*  
6 *Tracy Logistics, LLC, an unknown business entity, and DOES 1 through 100,*  
7 *inclusive*, Case No. BC515593. (A true and correct copy of the Complaint is  
8 attached hereto as **Exhibit A** to the Request for Judicial Notice (“RJN”).)

9 2. The time for filing a Notice of Removal does not run until a party has  
10 been formally served with the summons and complaint under the applicable state  
11 law “setting forth the claim for relief upon which such action or proceeding is  
12 based” or, if the case stated by the initial pleading is not removable, after receipt of  
13 any “other paper from which it may be first ascertained that the case is one which  
14 is or has become removable.” 28 U.S.C. §§ 1446; *Murphy Bros., Inc. v. Michetti*  
15 *Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (holding that “a named  
16 defendant’s time to remove is triggered by simultaneous service of the summons  
17 and complaint”). Defendants were served with the Complaint on July 31, 2013.

18 3. Defendants filed their Answer to the Complaint in Los Angeles  
19 County Superior Court on August 14, 2013. (A true and correct copy of the  
20 Answer is attached hereto as **Exhibit B** to the RJN.) Defendants have not filed any  
21 other pleadings or papers in this action prior to this Notice of Removal.

22 4. This Notice of Removal is timely as it is filed within thirty days of  
23 service of the Complaint. 28 U.S.C. § 1446(b).

24 5. Defendants have not secured the consent of the “DOE” defendants  
25 before removing this action because Defendants do not know the identity of the  
26 “DOE” defendants and have no reason to believe that any of them have been  
27 properly served or have voluntarily appeared in this action. Both named  
28

1 Defendants, C&S Wholesale Grocers, Inc. and Tracy Logistics LLC, join in the  
2 Notice of Removal.

3 6. Plaintiff Chan alleges he was misclassified as a salaried warehouse  
4 supervisor and should have instead been classified as a non-exempt hourly worker  
5 and paid by the hour. (Complaint, ¶¶ 13-15.) The Complaint alleges nine causes  
6 of against Defendants as follows: (1) unpaid overtime (Cal. Lab. Code §§ 510 and  
7 1198); (2) unpaid meal period premiums (Cal. Lab. Code §§ 226.7 and 512(a)); (3)  
8 unpaid rest period premiums (Cal. Lab. Code § 226.7); (4) unpaid minimum wage  
9 (Cal. Lab. Code §§ 1194, 1197, 1197.1); (5) wages not timely paid during  
10 employment (Cal. Lab. Code § 204); (6) non-compliant wage statements (Cal. Lab.  
11 Code §226(a)); (7) failure to keep requisite payroll records (Cal. Lab. Code §  
12 1174(d)); (8) unreimbursed business expenses (Cal. Lab. Code §§ 2800 and 2802);  
13 and (9) violation of the California Business and Professions Code, §§ 17200 *et seq.*  
14 (Complaint, ¶¶ 42-106.)

15 7. The Statute of Limitations on Plaintiff's cause of action for alleged  
16 violation of the California Business and Professions Code, §§ 17200 *et seq.* is four  
17 years. Plaintiff alleges that Defendants violated §§ 17200 *et seq.* by, *inter alia*,  
18 requiring Plaintiff to work overtime without proper compensation, requiring  
19 Plaintiff to work through his meal and rest breaks, and failing to pay timely wages.  
20 Plaintiff further alleges that he "is entitled to restitution of the wages withheld and  
21 retained by Defendant during a period that commences four years prior to the filing  
22 of this Complaint." Accordingly, for purposes of the calculations in this Notice of  
23 Removal, the "relevant time period" is from July 18, 2009 until the present.

24 8. Plaintiff is a putative class member in an action, originally filed in  
25 Sacramento County Superior Court and subsequently removed to the United States  
26 District Court, Eastern District of California, entitled "*Dennis Bicek, individually*  
27 *and on behalf of other members of the general public similarly situated, and on*  
28 *behalf of aggrieved employees pursuant to the Private Attorneys General Act*



1 (“PAGA”) v. *C&S Wholesale Grocers, Inc., a Vermont corporation; Tracy*  
 2 *Logistics, LLC, an unknown business entity; and DOES 1 through 100, inclusive*”,  
 3 case number 2:13-cv-00411-MCE-KJN (the “Bicek Action”). (A true and correct  
 4 copy of the Bicek Complaint is attached hereto as **Exhibit C** to the RJN.) The  
 5 Bicek Action alleges three causes of action against Defendants as follows: (1)  
 6 Unlawful Failure to Pay Minimum and Overtime Wages (Lab. Code §§ 510, 1194,  
 7 *et seq.*); (2) Labor Code Private Attorneys General Act of 2004 (Lab. Code § 2698,  
 8 *et seq.*) (“PAGA”); and (3) Unfair Competition (Bus. & Prof. Code § 17200, *et*  
 9 *seq.*).

10 9. The Bicek Action, brought by the same attorneys who represent the  
 11 Plaintiff in this Action, is brought on behalf of “All current and former California-  
 12 based salaried ‘warehouse supervisors,’ or person who held similar job titles and/or  
 13 performed similar job duties, who worked for Defendants within the State of  
 14 California from February 3, 2007 to final judgment.” (**Exhibit C** to the RJN,  
 15 Bicek Complaint, ¶ 17.) Plaintiff is a member of this putative class.

16 10. The same attorneys who filed this Action moved to remand the Bicek  
 17 Action. On August 2, 2013, the United States District Court for the Eastern  
 18 District of California DENIED the motion.<sup>1</sup> (A true and correct copy of the Order  
 19 Denying Motion to Remand is attached hereto as **Exhibit D** to the RJN.)

20 11. The same attorneys who filed this Action and the Bicek Action also  
 21 previously filed another putative class action in Sacramento County Superior  
 22 Court, alleging the same claims against the same Defendants entitled “*DAVID*  
 23 *TOMPKINS, individually, and on behalf of other members of the general public*  
 24 *similarly situated, and on behalf of aggrieved employees pursuant to the Private*  
 25 *Attorneys General Act (“PAGA”) v. C&S Wholesale Grocers, Inc., a Vermont*  
 26 *corporation; Tracy Logistics, LLC, an unknown business entity; and DOES 1*  
 27

28 <sup>1</sup> Defendants intend to file a motion to transfer this case to the Eastern District of California and  
 subsequently to relate it to this putative class action.

1 *through 100, inclusive,*” Case No. 34-2011-00096371 (the “Tompkins Action”).  
 2 The Tompkins Action alleged the same three causes of action on behalf of the  
 3 same putative class alleged in the Bicek Action.<sup>2</sup>

4 12. After discovery, including the deposition of putative class  
 5 representative David Tompkins (“Tompkins”), the Tompkins Action was resolved  
 6 by Defendants’ joint offer to pay to the individual plaintiff a total sum of \$75,001  
 7 (Seventy-Five Thousand One Dollars). (A true and correct copy of the Offer to  
 8 Compromise and Acceptance is attached hereto as **Exhibit E** to the RJN.)

9 13. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) and this  
 10 action is removable under 28 U.S.C. § 1441(b) in that it involves citizens of  
 11 different states and the amount in controversy exceeds the sum of \$75,000  
 12 exclusive of interests and costs.

13 14. Under the Federal Courts Jurisdiction and Venue Clarification Act of  
 14 2011, Congress clarified that the *preponderance of the evidence* standard applies to  
 15 removals under 28 U.S.C. § 1332(a). *See* H.R. Rep. 112-10 at 16 (“defendants do  
 16 not need to prove to a legal certainty that the amount in controversy requirement  
 17 has been met.”). 28 U.S.C. § 1446(c)(2)(A) provides, in relevant part, that “the  
 18 notice of removal may assert the amount in controversy if the initial pleading seeks  
 19 . . . a money judgment, but the State practice . . . permits recovery of damages in  
 20 excess of the amount demanded.” *See Damele v. Mack Trucks, Inc.*, 219 Cal. App.  
 21 3d 29, 41-42 (1990) (noting that under California law, a plaintiff is not limited to  
 22 the statement of damages set forth in his Complaint.) Under these circumstances,  
 23 “removal of the action is proper on the basis of an amount in controversy . . . if the  
 24

25 <sup>2</sup> The same attorneys who filed this action have also filed at least four individual lawsuits on  
 26 behalf of 12 individual plaintiffs (including this action) all of whom currently work or have  
 27 worked at the same facility as Bicek in Stockton, California. These actions have been filed in the  
 28 Los Angeles County Superior Court and the San Joaquin County Superior Court. Defendants  
 intend to file Notices of Removal in all these actions and subsequently move to transfer all  
 actions removed to this Court to the United States District Court for the Eastern District of  
 California.

1 district court finds, by the preponderance of the evidence, that the amount in  
 2 controversy exceeds the amount specified in section 1332(a),” or \$75,000. 28  
 3 U.S.C. § 1446(c)(2)(B).

4 15. The preponderance standard is not a “daunting” standard. *Muniz v.*  
 5 *Pilot Travel Centers LLC*, No. CIV S-07-0325 FCD EFB (E.D. Cal. May 1, 2007);  
 6 *see Valdez v Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (“the parties  
 7 need not predict the trier of fact’s eventual award with one hundred percent  
 8 accuracy”). A removing defendant must simply produce underlying facts or  
 9 evidence demonstrating more likely than not the amount in controversy exceeds  
 10 \$75,000. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005)  
 11 (district court properly considered damages awards in other similar cases); *Rippee*  
 12 *v. Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005) (noting that the  
 13 inquiry is what amount is “put in controversy” by the plaintiff’s complaint, not  
 14 what a defendant will actually owe).

15 16. As set forth more fully below, the Court has diversity jurisdiction  
 16 under 28 U.S.C. § 1332(a) over Plaintiff’s claims because Plaintiff is diverse from  
 17 both Defendants and Plaintiff’s claims are worth more than \$75,000 based on  
 18 Plaintiff’s sworn statements made in a declaration. If calculated specifically, the  
 19 amount in controversy of Plaintiff’s claims exceeds at least **\$179,524.86**, which  
 20 does not include the amount in controversy on all Plaintiff’s alleged causes of  
 21 action or attorneys’ fees.

### 22 **Plaintiff and Defendants are Completely Diverse**

23 17. Plaintiff was employed as a warehouse supervisor in the State of  
 24 California at the Stockton location of Tracy Logistics LLC (the “Stockton  
 25 facility”). Plaintiff alleges that he “is an individual residing in the State of  
 26 California.” (Ex. A, Compl. ¶ 5.)

27 18. For diversity of citizenship purposes, a person is a “citizen” of the  
 28 state in which he is domiciled. *Kantor v. Wellesly Galleries, Ltd.*, 704 F.2d 1088,



1 1090 (9th Cir. 1983). Residence is prima facie evidence of domicile. *State Farm*  
2 *Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). For purposes of  
3 diversity of citizenship jurisdiction, citizenship is determined by the individual's  
4 domicile at the time that the lawsuit is filed. *Armstrong v. Church of Scientology*  
5 *Int'l*, 243 F.3d 546, 546 (9th Cir. 2000) (citing *Lew v. Moss*, 797 F.2d 747, 750  
6 (9th Cir. 1986)).

7 19. Therefore, Plaintiff was domiciled in the State of California at the  
8 time he filed this action and is a citizen of California for purposes of diversity  
9 jurisdiction in this matter.

10 20. C&S Wholesale Grocers, Inc. is a Vermont corporation with its  
11 principal place of business in the State of New Hampshire. For purposes of  
12 diversity jurisdiction, a corporation is deemed a citizen of every State "by which it  
13 has been incorporated" and of the States "where it has its principal place of  
14 business." 28 U.S.C. § 1332(c)(1).

15 21. Therefore, for purposes of diversity jurisdiction, Defendant C&S  
16 Wholesale Grocers, Inc. is a citizen of both Vermont and New Hampshire and is  
17 not now, and was not at the time of the filing of the Complaint, a citizen of the  
18 State of California.

19 22. Tracy Logistics LLC is a limited liability company formed under the  
20 laws of the State of Delaware, with its principal place of business in the State of  
21 New Hampshire. For purposes of removal jurisdiction in an action like this one, a  
22 limited liability company "is a citizen of the State under whose laws it is organized  
23 and the State where it has its principal place of business." *Ferrell v. Express*  
24 *Check Advance of SC LLC*, 591 F.3d 698, 699-700 (4th Cir. 2010); *see Marroquin*  
25 *v. Wells Fargo, LLC*, 2011 WL 476540 at 2 (S.D. Cal. 2011) (holding that "an  
26 unincorporated association is "deemed to be a citizen of the State where it has its  
27 principal place of business and the State under whose laws it is organized" and  
28

1 citing Ferrell, supra, as applicable to determining citizenship of an LLC); *see also*  
2 28 U.S.C. § 1332(d)(10).

3 23. Tracy Logistics LLC is wholly owned by its sole member, C&S  
4 Logistics of Sacramento/Tracy LLC. For purposes of diversity jurisdiction, a  
5 limited liability company is also a citizen of every state of which its  
6 owners/members are citizens. *Johnson v. Columbia Properties Anchorage, LP*,  
7 437 F.3d 894, 899 (9th Cir. 2006). C&S Logistics of Sacramento/Tracy LLC is,  
8 and was at the time of the institution of this civil action, a limited liability company  
9 organized under the laws of the State of Delaware, with its principal place of  
10 business in New Hampshire. C&S Logistics of Sacramento/Tracy LLC is wholly  
11 owned by its sole member, C&S Acquisitions LLC, who is, and was at the time of  
12 the institution of this civil action, a limited liability company organized under the  
13 laws of the State of Delaware, with its principal place of business in New  
14 Hampshire. C&S Acquisitions LLC is wholly owned by its sole member, C&S  
15 Wholesale Grocers, Inc., who is, and was at the time of the institution of this civil  
16 action, a citizen of both Vermont and New Hampshire.

17 24. Therefore, for the purposes of removal jurisdiction, Tracy Logistics  
18 LLC is not now, and was not at the time of the filing of the Complaint, a citizen of  
19 the State of California.

20 25. Pursuant to 28 U.S.C. § 1441(a), the residence of fictitious and  
21 unknown defendants should be disregarded for purposes of establishing removal  
22 jurisdiction under 28 U.S.C. § 1332. *Fristoe v. Reynolds Metals Co.*, 615 F.2d  
23 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a  
24 removal petition); *see also Soliman v. Philip Morris, Inc.*, 311 F. 3d 966, 971 (9th  
25 Cir. 2002). Thus, the existence of Doe defendants one through one hundred,  
26 inclusive, does not deprive this Court of jurisdiction. *Abrego Abrego v. Dow*  
27 *Chemical Co.*, 443 F.3d 676, 679-680 (9th Cir. 2006).



### The Amount in Controversy Exceeds the Statutory Minimum

26. The alleged amount in controversy for Plaintiff's individual claims exceeds \$75,000 based on admissions made in his sworn declaration.

27. Plaintiff has executed a declaration that included information regarding his typical work schedule and hours. (Declaration of Jose Chan.); *see Sims v. AT&T Mobility Servs. LLC*, No: 2:12-cv-2702, 2013 WL 753496, at \*5 (E.D. Cal. Feb. 27, 2013) (considering declarations signed during the course of prior class action investigation in determining amount in controversy) *see also Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 n. 1 (9th Cir. 2002) (district court properly considered admission in a settlement letter proffered by the removing defendant in opposition to remand); *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (district court properly considered counsel's post-removal admission in open court that the amount in controversy was satisfied). Based upon these admissions, the amount in controversy on Plaintiff's overtime claim, alone, exceeds the statutory minimum for diversity jurisdiction.

28. **Overtime Claim:** In his first cause of action, Plaintiff alleges Defendants failed to pay overtime wages in violation of Labor Code §§ 510 and 1198. (Ex. A, Compl., ¶¶ 42-50.) Plaintiff alleges that "[d]uring the relevant time period, [he] worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week." (*Id.* ¶ 47.)

29. The Stockton facility is open 24 hours per day, 7 days per week. Most union employees at the Stockton facility work four (4), ten (10) hour shifts during the work week.

30. Plaintiff was employed at the Stockton facility for 214 weeks during the relevant time period.

31. In his declaration, Plaintiff stated that he has generally worked five days a week, from Monday to Friday from about 2:00 p.m. to 2:00 a.m., since April 2011. (Declaration of Jose Chan, ¶ 4.) Before April 2011, Plaintiff's worked

1 from Sunday through Thursday, during which he worked 12-hour shifts each day  
 2 except for Thursdays when he worked 10.5-hour shifts. (*Id.*) Therefore, based on  
 3 Plaintiff's sworn statements, during the relevant time period, he allegedly worked a  
 4 total of 18.5 hours of overtime per week between July 18, 2009 and March 31,  
 5 2011 (88 workweeks) and 20 hours of overtime per week since April 2011 (126  
 6 workweeks).

7 32. Plaintiff's salary as a warehouse supervisor during the relevant time  
 8 period ranged from \$53,298.30 in 2009 to \$62,159.85 in 2013. Plaintiff's average<sup>3</sup>  
 9 hourly wage during the relevant time period was \$28.13.<sup>4</sup>

10 33. Therefore, based on the sworn statements in Plaintiff's declaration,  
 11 the amount in controversy over Plaintiff's overtime claim would be, at minimum,  
 12 **\$175,024.86** ((88 workweeks x 18.5 hours OT per week x \$28.13 per hour x 1.5) +  
 13 (126 workweeks x 20 hours OT per week x \$28.13 per hour x 1.5)). Based on  
 14 Plaintiff's own declaration, his **overtime claim alone** exceeds the jurisdictional  
 15 threshold of \$75,000 in amount in controversy.

16 34. **Non-Compliant Wage Statement Claim:** Plaintiff also alleges that  
 17 Defendants failed to provide Plaintiff with complete and accurate wage statements.  
 18 (*See* Compl., ¶¶ 29, 86, 103.) Specifically, Plaintiff alleges that Defendants failed  
 19 "to include the total number of hours worked by Plaintiff" in wage statements. (*Id.*  
 20 ¶ 86.)

21 35. Plaintiff seeks statutory penalties pursuant to Labor Code Section  
 22 226(e) as a result of these violations. (Compl., Prayer for Relief, ¶ 32.) Labor  
 23 Code Section 226(e) provides that "[a]n employee suffering injury as a result of a

24 <sup>3</sup> Defendants use the weighted average, taking into consideration the amount of weeks worked at  
 25 each hourly rate during the relevant class period. Specifically, the weighted average is calculated  
 26 as follows: ((15 weeks x \$25.62 per hour) + (53 weeks x \$26.65 per hour) + (16 weeks x \$27.45  
 27 per hour) + (36 weeks x 28.17 per hour) + (52 weeks x \$29.16 per hour) + (42 weeks x \$29.88  
 28 per hour))/214 workweeks = **\$28.13**.

<sup>4</sup> Even using Plaintiff's minimum salary of \$53,298.37 per year (\$25.62 per hour), the amount in  
 controversy on Plaintiff's overtime claim is \$159,407.64, well exceeding the minimal amount in  
 controversy for diversity jurisdiction.

1 knowing and intentional failure by an employer to comply with subdivision (a) is  
2 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the  
3 initial pay period in which a violation occurs and one hundred dollars (\$100) per  
4 employee for each violation in a subsequent pay period, not to exceed an aggregate  
5 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and  
6 reasonable attorney's fees."

7 36. The alleged limitations period for a potential wage statement claim  
8 would be from July 18, 2010 to the present, or a three-year statute of limitation.  
9 Employees at the Stockton facility are paid on a weekly basis. As such, there are  
10 52 pay periods per year. Thus, based on Plaintiff's allegations and sworn  
11 statements that he worked more than eight hours a day every day he was  
12 scheduled, he allegedly received at least 156 allegedly inaccurate wage statements  
13 between July 18, 2010 to July 18, 2013, the date he filed this Complaint.

14 37. Based on the number of allegedly inaccurate wage statements he  
15 received, the amount in controversy on Chan's claim for wage statement violations  
16 is \$15,550 (\$50 for the initial pay period and \$100 for 155 subsequent pay  
17 periods). But, Labor Code § 226(e) caps the aggregate penalties at \$4,000 per  
18 person. Therefore, Plaintiff's individual wage statement claim demonstrates an  
19 amount in controversy of **\$4,000**.

20 38. **Failure to Keep Requisite Payroll Records Claim.** Plaintiff claims  
21 that Defendants "failed to keep accurate and complete payroll records showing the  
22 hours worked daily and the wages paid, to Plaintiff," in violation of Labor Code  
23 Section 1174(d). (Complaint, ¶¶ 92-93.) Plaintiff seeks to recover, *inter alia*,  
24 statutory penalties pursuant to Labor Code Section 1174.5, which provides that  
25 "Any person employing labor who willfully fails to maintain the records required  
26 by subdivision (c) of Section 1174 or accurate and complete records required by  
27 subdivision (d) of Section 1174, or to allow any member of the commission or  
28 employees of the division to inspect records pursuant to subdivision (b) of Section



1 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

2 According, Plaintiff’s Labor Code Section 1174(d) claim demonstrates an amount  
3 in controversy of **\$500**.

4 39. Therefore, based upon Plaintiff’s allegations regarding failure to pay  
5 overtime, inaccurate wage statements, and failure to maintain requisite payroll  
6 records, the amount in controversy for his claims is **\$179,524.86**, calculated as  
7 follows:

- 8 • \$175,024.86 Overtime Claim<sup>5</sup>
- 9 • \$4,000 Wage Statement Claim
- 10 • \$500 Failure to Maintain Requisite Payroll Records

11 40. Requests for attorneys’ fees must also be taken into account in  
12 ascertaining the amount in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d  
13 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys’ fees are to be included  
14 in amount in controversy, regardless of whether award is discretionary or  
15 mandatory.) Thus, the amount in controversy for purposes of removal under 28  
16 U.S.C. § 1332(a) exceeds **\$179,524.86**.

17 41. A reasonable estimate of fees likely to be recovered may be used in  
18 calculating the amount in controversy. *Brady v. Mercedes-Benz USA, Inc.*, 243 F.  
19 Supp. 2d 1004, 1010-11 (N.D. Cal. 2002) (“Where the law entitles the prevailing  
20

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21 <sup>5</sup> There is no question that the jurisdictional threshold of \$75,000 is met in this case, since the  
22 \$179,524.86 does not include the amount in controversy for several of plaintiff’s other claims for  
23 which he seeks recovery. In his second and third causes of action, Plaintiff seeks unpaid meal  
24 and rest period premiums. Plaintiff also seeks: (1) “general unpaid wages,” “general and special  
25 damages,” and statutory wage penalties claims for alleged violation of Labor Code §§ 1194,  
26 1197, and 1197.1, (Complaint, Prayer, ¶¶ 19-25); (2) “all actual, consequential, and incidental  
27 losses and damages” for alleged violation of Labor Code § 204 (Complaint, Prayer, ¶¶ 26-29);  
28 and (3) damages, penalties, and punitive damages for alleged violation of Labor Code §§ 2800  
and 2802, (Complaint, Prayer, ¶¶ 39-44). Because, based on his own sworn statements,  
Plaintiff’s overtime claim plainly exceeds the minimum amount in controversy for diversity  
jurisdiction, Defendants do not include calculations of the amount placed in controversy by these  
claims in the Notice of Removal. However, Defendants can and will include such calculations  
upon the court’s request and reserve the right to supplement the Notice of Removal with such  
information.

1 plaintiff to recover reasonable attorney fees, a reasonable estimate of fees likely to  
 2 be incurred to resolution is part of the benefit permissibly sought by the plaintiff  
 3 and thus contributes to the amount in controversy.); *Zator v. Sprint/United Mgmt.*  
 4 *Co.*, 2011 U.S. Dist. LEXIS 33383 at \* 6 (S.D. Cal. Mar. 29, 2011).

5 42. Moreover, in the Tompkins Action, Tompkins brought the same  
 6 claims and alleged, as Plaintiff does here, that as a warehouse supervisor he was  
 7 misclassified as an exempt employee. While Tompkins only brought claims for  
 8 unpaid minimum and overtime wages, violation of the California Labor Code §§  
 9 2698 *et seq.*, and violation of the California Business and Professions Code §§  
 10 17200 *et seq.*, Plaintiff here brings those claims and additionally alleges claims of  
 11 unpaid meal and rest period premiums, wages not timely paid during employment,  
 12 non-compliant wage statements, failure to keep requisite payroll records, and  
 13 unreimbursed business expenses. Both Plaintiff and Tompkins worked as  
 14 warehouse supervisors at the same location, but Tompkins worked as a warehouse  
 15 supervisor for less time than Plaintiff worked in the same position. Tompkins  
 16 settled his individual claims for \$75,001. Because Plaintiff worked longer than  
 17 Tompkins in the same position, makes the same allegations of misclassification in  
 18 this lawsuit and additionally alleges six other claims, Plaintiff's claims are worth  
 19 more than, but at least as much as, \$75,001.<sup>6</sup>

20 43. This fact alone is sufficient to demonstrate the minimum amount in  
 21 controversy for Plaintiff's claims.

22 44. Based on the aforementioned allegations and calculations, the amount  
 23 in controversy on Plaintiff's claims far exceeds \$75,000 (exclusive of interest,  
 24 costs, and attorneys' fees) and thus this Court has jurisdiction pursuant to 28  
 25 U.S.C. § 1332(a) and Plaintiff's action is removable under 28 U.S.C. § 1441(b).

26  
 27 <sup>6</sup> Although the settlement figure in Tompkins conclusively establishes the minimum amount in  
 28 controversy on Plaintiff's claims here, as with any settlement the amount agreed upon represents  
 a compromise and thus does not represent the full potential value of the claim or the total amount  
 in controversy for purposes of removal.

**Venue**

45. Venue lies in the United States District Court for the Central District of California, pursuant to 28 U.S.C. §§ 1441, 1446(a), and 84(c)(2). This action originally was brought in the Los Angeles County Superior Court of the State of California, which is located within the Central District of California. Therefore, venue is proper because it is the “district and division embracing the place where such action is pending.” (28 U.S.C. § 1441(a).)

46. A true and correct copy of this Notice of Removal will be promptly served on Plaintiff and filed with the Clerk of the San Joaquin County Superior Court of the State of California, as required under 28 U.S.C. § 1446(d).

WHEREFORE, Defendants pray that the above action pending before the Los Angeles County Superior Court of the State of California be removed to the United States District Court for the Central District of California.

DATED: August 29, 2013

Respectfully submitted,

SEYFARTH SHAW LLP

By: 

Jon D. Meer

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C&S WHOLESALE GROCERS, INC.  
and TRACY LOGISTICS LLC



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Gary A. Feess and the assigned Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

2:13CV6357 GAF JCx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

August 29, 2013

Date

By J.Prado  
Deputy Clerk

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NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

**Subsequent documents must be filed at the following location:**

☒ Western Division  
312 N. Spring Street, G-8  
Los Angeles, CA 90012

☐ Southern Division  
411 West Fourth St., Ste 1053  
Santa Ana, CA 92701

☐ Eastern Division  
3470 Twelfth Street, Room 134  
Riverside, CA 92501

**Failure to file at the proper location will result in your documents being returned to you.**